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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Kohler Marsh,

10 Plaintiff,

11 v.

12 Zarcas Res Tempe LLC, et al.,

13 Defendants.
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No. CV-17-04057-PHX-DLR

ORDER

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16 Before the Court are Defendants Zarcas Res Tempe LLC (“Zarcas”) and Ucomm
17 LLC’s (“Ucomm”) motion to dismiss (Doc. 15), and Plaintiff John Marsh’s motion to
18 strike (Doc. 20). Neither party requested oral argument. For the following reasons,
19 Defendants’ motion to dismiss is granted and Plaintiff’s motion to strike is denied.

20 **I. Background**

21 Plaintiff formerly leased residential property from Defendants. In 2017,
22 Defendants filed a state court eviction action against Plaintiff after he defaulted on his
23 rent.¹ In the context of that eviction action, Plaintiff raised several affirmative
24 defenses/counterclaims, including that Defendants violated Arizona law by failing to
25 make certain requested repairs that Plaintiff claimed materially affected his health and
26 safety, and by failing to file certain information with the Maricopa County Assessor’s

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28 ¹ The Court may take judicial notice of the state court eviction action and the
filings therein. *See* Fed. R. Civ. P. 201; *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir.
2001).

1 office. (Doc. 15-3.) Plaintiff's requested relief on his counterclaims included \$336,757,
2 allegedly representing "all prepaid rent since [he] took possession" of the property. (*Id.*
3 at 7.) On October 3, 2017, the Maricopa County Superior Court found Plaintiff guilty
4 and entered judgment in favor of Defendants for possession of the property and for
5 \$36,493.11 in unpaid rent, late fees, and other charges. (Doc. 15-2.) Plaintiff did not
6 appeal that judgment.

7 Instead, one month later Plaintiff filed this lawsuit. His complaint alleges claims
8 that are materially identical to his affirmative defenses/counterclaims in the state court
9 eviction action. Plaintiff once again complains that Defendants violated Arizona law by
10 failing to repair certain conditions hazardous to his health and safety, and by not filing
11 certain information with the Maricopa County Assessor's Office. (Doc. 1.) Like his state
12 court counterclaims, Plaintiff seeks damages in the amount of \$336,757, allegedly
13 representing his prepaid rent.

14 Defendants have moved to dismiss the complaint both for lack of subject-matter
15 jurisdiction and for failure to state a claim upon which relief may be granted. (Doc. 25.)
16 Plaintiff moved to strike Defendants' motion, but his motion to strike also responds
17 substantively to Defendants' arguments. (Doc. 20.)

18 **II. Motion to Strike**

19 Pursuant to Local Rule of Civil Procedure 7.2(m), "a motion to strike may be filed
20 only if it is authorized by statute or rule, . . . or if it seeks to strike any part of a filing or
21 submission on the ground that it is prohibited (or not authorized) by a statute, rule, or
22 court order." Motions to strike are generally disfavored and rarely granted. *Ordahl v.*
23 *U.S.*, 646 F. Supp. 4, 6 (D. Mont. 1985).

24 Plaintiff argues that Defendants' motion violates: (1) Local Rule 12.1(c) because
25 Defendants failed to adequately confer with him regarding the substance of the motion
26 before filing it; (2) Federal Rule 12(a)(1)(A) because it was untimely filed; and (3) Local
27 Rule 7.1(a)(3) because the caption of the motion lists the parties' names in all capital
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1 letters instead of proper upper and lower case type.² Plaintiff's arguments are not well-
2 taken.

3 First, the Court has reviewed the communications appended to Defendants' reply
4 memorandum and finds that Defendants adequately attempted to confer with Plaintiff
5 regarding the substance of their motion to dismiss before filing it. Second, Defendants'
6 motion to dismiss is timely. The record shows that Ucomm was served on December 1,
7 2017. (Doc. 13.) Although nothing in the record shows that Plaintiff served Zarcal,
8 Defendants jointly moved to dismiss within 21 days of service upon Ucomm. Moreover,
9 Defendants were not required to file an answer along with their motion to dismiss
10 because the motion is based, at least in part, on lack of subject-matter jurisdiction. (Doc.
11 3 ¶ 5(a).) Finally, although the Court commends Plaintiff for his meticulous attention to
12 this District's Local Rules, the Court will not strike a motion simply because its caption is
13 written in all capital letters. The Court prefers to resolve cases on the merits, not on
14 technicalities. For these reasons, Plaintiff's motion to strike is denied.

15 **III. Motion to Dismiss**

16 Defendants' motion to dismiss is based on Rules 12(b)(1) and (b)(6). Rule
17 12(b)(1) permits a party to raise lack of subject-matter jurisdiction in a motion to dismiss.
18 Under Rule 12(b)(6), the Court's task "is to evaluate whether the claims alleged
19 [plausibly] can be asserted as a matter of law." *See Adams v. Johnson*, 355 F.3d 1179,
20 1183 (9th Cir. 2004); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

21 Beginning with Defendants' jurisdictional argument, the Court is satisfied that
22 subject-matter jurisdiction exists. This case is here on diversity. Defendants contend that
23 the Court lacks subject-matter jurisdiction because the Arizona statutes upon which
24 Plaintiff's claims are based do not create a private cause of action and, therefore, the
25 amount in controversy is \$0—far less than the \$75,000 threshold for diversity

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27 ² Plaintiff also argues that Defendants "assert a defense that is not warranted by
28 existing law." (Doc. 20 at 3.) Plaintiff's criticism of the substance of Defendants'
motion, however, is not a reason to strike the motion. Instead, the Court has considered
these critiques as a response to the merits of the motion to dismiss.

1 jurisdiction. Defendants' argument, however, requires the Court to make a determination
2 on the merits of Plaintiff's claim. Stated differently, Defendants argue that the amount in
3 controversy is \$0 because Plaintiff cannot pursue his damages claims as a matter of law.
4 But this argument collapses the 12(b)(1) and the 12(b)(6) inquiries. Plaintiff's complaint
5 seeks damages well in excess of \$75,000. To the extent Defendants' argument
6 concerning the amount in controversy requires the Court to pass on the merits on
7 Plaintiff's claims, the argument is more appropriately considered under the rubric of Rule
8 12(b)(6).

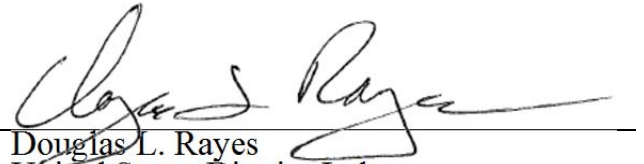
9 Moving on to Rule 12(b)(6), Defendants argue that Plaintiff's complaint fails to
10 state a claim to relief for four reasons: (1) the Arizona statutes upon which Plaintiff's
11 claims are based do not create a private cause of action; (2) these statutes do not apply to
12 Defendants because they are not the owners of the property; (3) Plaintiff's claims are
13 time-barred; and (4) Plaintiff's claims are barred by claim preclusion. The Court finds
14 that Defendants' final argument is dispositive and, therefore, declines to unnecessarily
15 opine on the proper interpretation of Arizona law or the timeliness of Plaintiff's claims.

16 "[U]nder the doctrine of res judicata, a judgment on the merits in a prior suit
17 involving the same parties or their privies bars a second suit based on the same cause of
18 action. The doctrine of res judicata binds the same parties standing in the same capacity
19 in the subsequent litigation on the same cause of action, not only upon the facts actually
20 litigated, but also upon those points which might have been (even though not expressly)
21 litigated." *Aldrich and Steinberger v. Martin*, 837 P.2d 1180, 1183 (Ariz. Ct. App. 1992)
22 (internal quotations and citations omitted). Here, Plaintiff and Defendants both were
23 parties to a prior state court eviction action. Plaintiff raised these same claims as
24 affirmative defenses/counterclaims in the context of that litigation. The state court found
25 Plaintiff guilty and awarded damages to Defendants. In doing so, the state court
26 necessarily rejected Plaintiff's affirmative defenses/counterclaims, as the judgment
27 included no offsets for Plaintiff's alleged prepaid rent. Plaintiff chose not to appeal that
28 judgment. He cannot now re-litigate those affirmative defenses/counterclaims in the

1 context of a new, federal lawsuit. Defendants' motion to dismiss therefore is granted
2 because Plaintiff's claims are precluded by the state court eviction judgment.

3 **IT IS ORDERED** that Plaintiff's motion to strike (Doc. 20) is **DENIED** and
4 Defendants' motion to dismiss (Doc. 15) is **GRANTED**. The Clerk of the Court shall
5 terminate this case.

6 Dated this 6th day of September, 2018.

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11 Douglas L. Rayes
12 United States District Judge
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